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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/117,447    12/02/98    LUBITZ    W    P564-8013

HM22/0329

EXAMINER

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ART UNIT

PAPER NUMBER

1645

7

DATE MAILED:

03/29/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner of Patents and Trademarks

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# Office Action Summary

Application No.  
09/117,447

Applicant(s)

LUBITZ ET AL

Examiner

N. M. Minnifield

Group Art Unit

1645



- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

- ☒ Claim(s) 1-17, 19-24, 26, 28-30, 32-34, and 37-57 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claims 1-17, 19-24, 26, 28-30, 32-34, and 37-57 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

☒ CRF NOTICE

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Sequence Requirements*

1. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 C.F.R. § 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 C.F.R. §§ 1.821-1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures.
2. Full compliance with the sequence rules is required in response to this office action. A complete response to this office action should include both compliance with the sequence rules and a response to the election/restriction requirement set forth below. Failure to fully comply with *both* these requirements in the time period set forth in this office action will be held non-responsive.
3. Applicants' preliminary amendment filed December 2, 1998 is acknowledged and has been entered. Claims 3, 4, 13, 17, 20, 21, 24, 31, 40, 42 and 43 have been amended. Claims 18, 25, 27, 31, 35 and 36 have been canceled. New claims 46-57 have been added. Claims 1-17, 19-24, 26, 28-30, 32-34, 37-57 are now pending in the present application.

It is noted that "Use" claims (26, 48-51 and 54-57) have been viewed as methods claims for purposes of this restriction.

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*Election/Restrictions*

4. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-20, 28-30, 32, 37-47, 52 and 53, drawn to nucleic acids, vectors, cells and methods of producing a protein.

Group II, claims 21-24 and 33-34, drawn to recombinant proteins.

Group III, claims 26, 48, 49, 54 and 55, drawn to methods of using a vaccine composition.

Group IV, claims 50, 51, 56 and 57, drawn to methods of using an enzyme reactor.

The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: they require different methods or can be used in different ways other than that specifically claimed. Special technical features include the nucleic acids, recombinant proteins, host cells and vectors, vaccine compositions. Accordingly, Groups I-IV are not so linked by the same or correspondingly special technical feature as to form a single general inventive concept.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is (703) 305-3394. The examiner can normally be reached on Monday-Thursday from 7:00 AM-4:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, Ph.D., can be reached on (703) 308-3995. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

N. M. Minnifield

March 22, 2000

  
NITA MINNIFIELD  
PRIMARY EXAMINER